



Billing Code: 4510.43-P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR Part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below to modify the application of existing mandatory safety standards codified in Title 30 of the Code of Federal Regulations.

DATES: All comments on the petitions must be received by the Office of Standards, Regulations and Variances on or before [Insert date 30 days from the date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit your comments, identified by “docket number” on the subject line, by any of the following methods:

1. **Electronic Mail:** zzMSHA-comments@dol.gov. Include the docket number of the petition in the subject line of the message.
2. **Facsimile:** 202-693-9441.

3. Regular Mail or Hand Delivery: MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209-3939, Attention: George F. Triebsch, Director, Office of Standards, Regulations and Variances. Persons delivering documents are required to check in at the receptionist's desk on the 21st floor. Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards, Regulations and Variances at 202-693-9447 (Voice), barron.barbara@dol.gov (E-mail), or 202-693-9441 (Facsimile). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

(1) An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

(2) That the application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petitions for Modification

Docket No: M-2012-163-C.

Petitioner: Tennco Energy, Inc., P.O. Box 517, Middlesboro, Kentucky 40965

Mine: Hance Mine No. 1, MSHA I.D. No. 15-19408, located in Bell County, Kentucky.

Regulation Affected: 30 CFR 75.208 (Warning devices).

Modification Request: The petitioner requests a modification of the existing standard to permit a readily visible warning to be posted at the second row of permanent roof support outby unsupported roof or a physical barrier to be installed to impede travel beyond permanent support, except during the installation of roof supports. The petitioner states that:

(1) The Kentucky Office of Mine Safety and Licensing requires “a warning device” to be placed installed on the second row of permanent roof support outby unsupported roof.

(2) MSHA’s approved Precautions for Remote Control Operation of Continuous Mining Machines states that “while using remote controls, the continuous mining machine operator and all other persons will position themselves no closer than the second “full row” of installed roof bolts outby the face.

(3) This petition is necessary to improve safety and to attain commonality between State and Federal regulations.

(4) Safety increases when the distance an employee keeps from unsupported roof increases.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

Docket No: M-2012-164-C.

Petitioner: Gateway Eagle Coal Company, LLC, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222-1000.

Mine: Campbells Creek No. 10 Mine, MSHA I.D. No. 46-08637, located in Boone County, West Virginia.

Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment in or inby the last open crosscut, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans, requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment will be used when equivalent permissible electronic surveying equipment is not available. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used in or inby the last open crosscut will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

- (i) Checking the instrument for any physical damage and the integrity of the case.
 - (ii) Removing the battery and inspecting for corrosion.
 - (iii) Inspecting the contact points to ensure a secure connection to the battery.
 - (iv) Reinserting the battery and powering up and shutting down to ensure proper connections.
 - (v) Checking the battery compartment cover to ensure that it is securely fastened.
- (c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment in or inby the last open crosscut.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn outby the last open crosscut.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries in the surveying equipment will be changed out or charged in fresh air outby the last open crosscut.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to

the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M-2012-165-C.

Petitioner: Gateway Eagle Coal Company, LLC, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222-1000.

Mine: Campbells Creek No. 10 Mine, MSHA I.D. No. 46-08637, located in Boone County, West Virginia.

Regulation Affected: 30 CFR 75.507-1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment in return airways, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans, requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment will be used when equivalent permissible electronic surveying equipment is not available. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used in return airways will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

- (i) Checking the instrument for any physical damage and the integrity of the case.
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 - (iv) Reinserting the battery and powering up and shutting down to ensure proper connections.
 - (v) Checking the battery compartment cover to ensure that it is securely fastened.
- (c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment in return airways.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn out of the return airways.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries in the surveying equipment will be changed out or charged in fresh air out of the return.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to

the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

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Mine: Campbells Creek No. 10 Mine, MSHA I.D. No. 46-08637, located in Boone County, West Virginia.

Regulation Affected: 30 CFR 75.1002(a) (Installation of electric equipment and conductors; permissibility).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment within 150 feet of pillar workings and longwall faces, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary. To ensure the safety of the miners in active mines and to protect miners in

future mines that may mine in close proximity to these same active mines, it is necessary to determine the exact location and extent of the mine workings.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans, requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

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(b) All nonpermissible electronic surveying equipment to be used within 150 feet of pillar workings or longwall faces will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

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(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment within 150 feet of pillar workings and longwall faces.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn further than 150 feet from pillar workings.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries in the surveying equipment will be changed out or charged in fresh air more than 150 feet from pillar workings.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards and limitations associated with the use of nonpermissible surveying equipment in areas where methane could be present.

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Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket No: M-2012-167-C.

Petitioner: Gateway Eagle Coal Company, LLC, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222-1000.

Mine: Farley Eagle Mine, MSHA I.D. No. 46-01537, located in Boone County West Virginia.

Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment in or inby the last open crosscut, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

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Dated: December 21, 2012

George F. Triebsch
Director
Office of Standards, Regulations and Variances

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